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CANADIAN-AMERICAN RELATIONS

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CANADIAN-AMERICAN RELATIONS

ISSUE DEFINITION

Relations between Canada and the United States are generally harmonious and friendly. They involve almost every aspect of the two countries' activities, whether political, economic, social or cultural. Because the population of the United States is 10 times that of Canada, the impact of the relationship is unequal on the two sides of the boundary. In view of the extent of our relations, differences of opinion inevitably arise on matters of mutual concern. One characteristic of these differences is that in Canada they often take on a national dimension while in the United States they are usually seen as local problems, affecting only limited segments of the American population. The problems are rarely raised in the first instance by the American government; they crop up in Congress, where representatives of the people concerned defend the interests of their constituents. This is particularly the case in the trade area where protectionist and liberal interests clash intermittently. The outcome of these battles has important implications for bilateral trade relations.

The state of our relationship depends largely on the readiness of both sides to cooperate on finding a rapid solution to the problems and questions encountered in the various sectors of common activity. The scope of the relationship is also enhanced by the establishment of an annual summit meeting between the two leaders and an ongoing consultative process between the U.S. Secretary of State and the Canadian Secretary of State for External Affairs on issues of mutual concern. The formalization of these meetings has indicated the willingness of the two countries to settle their differences promptly.

BACKGROUND AND ANALYSIS

A. Trade and Investment Issues

The value of trade between the two countries stood at more than $189 billion (Can.) for 1991, a record unequalled anywhere else in the world. Each country is the other's major partner for both exports and imports. For Canada, trade with its American partner now accounts for more than 75% of its total trading activities, while slightly more than 20% of U.S. trade is with Canada. Since 1970, except the year 1975, Canada has registered a favourable balance of merchandise trade with the United States. After the reconciliation of merchandise trade data for the two countries for 1989, Canada had an estimated trade surplus of $11.3 billion. The previous yearly record surplus, which totalled $18.4 billion, was established in 1986.

However, Canada incurs a net deficit in terms of its investment income and services trade with the U.S., reflecting mainly payments for travel by tourists, interest and dividends, and shipping and transportation charges. The Canadian deficit rose to approximately $11.8 billion in 1987.

The end products category is the most important area of our bilateral merchandise trade, representing over half of the value of the total trade. Major items traded are motor vehicles and parts, office machinery and automatic data processing equipment, aircraft, and scientific instruments. The fabricated materials category accounts for less than one-third of the value of our bilateral trade and consists mainly of forest products, non-ferrous metals and chemicals. And, finally, in the crude materials category, oil, natural gas, iron-ore and concentrates constitute the most important Canadian exports, while the United States supplies a significant amount of coal to Canada.

Automotive goods trade between the two countries is by far the largest single item of bilateral trade, total exports and imports being valued at about $50 billion (Can.) in 1991. In this area, trade is completely non-dutiable under the terms of the 1965 Canada-U.S. Automotive Agreement. Over the life of the Pact, the balance of trade between the two countries has swung both ways, with growing deficits for Canada in the 1970s turning into large

surpluses in recent years. Canada has, however, traditionally incurred a large deficit in the automobile parts known as "original equipment parts," which become part of the assembled motor vehicle, as opposed to "spare parts," for maintenance or replacement, which can be obtained separately.

Canada and the U.S. are each other's foremost destination for foreign investment. The U.S. had, in 1986, over $170 billion (Can.) in direct and portfolio investment in Canada, while this country had an estimated $69 billion in the U.S. Under the *Investment Canada Act* adopted in June 1985, a new Agency -- Investment Canada -- in addition to reviewing major investment proposals of national economic significance, assists Canadian businesses to exploit opportunities for investment and technological advancement, provides investment information services and other investment services to facilitate economic growth in Canada and assists in the development of industrial and economic policies that affect investment in Canada.

Investment is one of the issues covered by the Free Trade Agreement (FTA). The FTA explicitly includes provisions for a more liberal investment environment between Canada and the United States. The principle of national treatment requires that each country accord investors from the other country treatment no less favourable than that accorded its own investors with respect to regulations affecting the establishment, the acquisition, the conduct and operation, and the sale of business firms. This does not mean, however, that U.S. and Canadian regulations and standards need to be harmonized. Several key sectors have been explicitly exempted from the national treatment provisions of the FTA: financial services (except insurance services), health, education, culture, communications, transportation, oil and gas, uranium, Crown corporations, and agricultural support programs. All existing laws, regulations, and published policies and practices are also exempted from the national treatment provisions.

Canada retains the right to review direct acquisitions of Canadian-owned firms by U.S. investors but the new gross asset threshold level for investment to be subject to review by Investment Canada will be raised in four steps, from $5 million to $150 million in 1992. Furthermore, Canada is phasing out over a four-year period the right to review U.S. indirect acquisitions involving the transfer of control of one foreign-controlled firm to another. Most other review provisions of the Investment Canada Act are grandfathered. This means, for

example, that Canada can still negotiate with American multinationals on research and development, technology transfer requirements, world product mandates and employment.

On 3 October 1987, after 16 months of sustained negotiations, the two governments came to an agreement on the elements to be included in a free trade pact. Prime Minister Brian Mulroney and U.S. President Ronald Reagan signed the final text of the Canada-U.S. free trade agreement on 2 January 1988. The key elements of the agreement are:

- the gradual elimination of barriers to trade in goods and services over a period of 10 years. Tariffs will be eliminated according to one of three schedules: on the agreement's entering into force on 1 January 1989; in five equal steps, most starting on 1 January 1989; or in 10 steps, most starting on 1 January 1989;

- the establishment of a trade dispute settlement mechanism which will guarantee the impartial application of the two countries' respective anti-dumping and countervailing duty laws and other aspects of trade remedy law. This means that either government may seek a review of an anti-dumping or countervailing duty determination by a bilateral panel with binding powers;

- the introduction of trade liberalization measures in agriculture which include, for example, the elimination of all tariffs (although Canada will be allowed to restore temporarily tariffs on fresh fruits and vegetables for a 20-year period under depressed price conditions); the prohibition of export subsidies on bilateral trade; and a conditional elimination of Canadian import licences for wheat, barley and oats and their products, as well as the elimination of Canadian western grain transportation subsidies on exports to the U.S.;

- the elimination of a range of specific barriers to trade in energy (oil, gas, coal, electricity, uranium), including all U.S. restrictions on enrichment of Canadian uranium and the embargo on exports of Alaskan crude oil up to 50,000 barrels a day. Also included in the energy sector is the softening of regulatory restrictions on trade in energy products;

- the confirmation of the Auto Pact with Canada agreeing to eliminate the duty remission programs by 1996 and to limit the duty-free entry privileges of the Auto Pact to current participants;

- the reduction of impediments to cross-border investment.

The Canada-U.S. agreement was generally well received by the business community, which stressed that it would lead to increased productivity and higher employment in Canada and substantially improve the country's competitive position. On the political front,

the signing of the Agreement was welcomed by a majority of the provinces, although the federal opposition parties as well as the governments of Ontario, Prince Edward Island and Manitoba (until its defeat by the Conservatives in the April 1988 provincial elections) opposed the deal. From the moment the Agreement was signed until Bill C-130, An Act to Implement the Free Trade Agreement Between Canada and the United States of America, was passed by the House of Commons on 31 August 1988, and throughout the course of the federal election campaign, debate raged between free trade supporters and opponents.

Simply put, free trade supporters argued that the agreement would secure and improve our access to the vast U.S. market, lead to greater opportunities for economies of scale in production and trade and promote higher productivity. Productive investments would increase as Canadian companies began to reap the benefits of expanded access to U.S. markets. The gradual elimination of trade barriers would lead to reductions in the price of imports and in the production of competing Canadian goods, thereby increasing the purchasing power of Canadians. Higher investment and consumption would in turn result in stronger economic growth, new jobs, a stronger, more productive economy, all of which would place Canada in a better position to maintain its social programs and further promote its cultural identity.

Free trade opponents, on the other hand, based their arguments on the following three issues: the defence of Canadian sovereignty, Canada's future ability to adopt and implement effective socioeconomic measures, and the absence of guarantees exempting Canada from protectionist U.S. trade laws. Some contended that if Canadians went along with the idea of a continental economy, they would sacrifice Canada's unique identity as a nation, simply by economic opportunism. These critics believe that the Free Trade Agreement will result in the loss of a significant portion of our sovereign rights, particularly in the energy, foreign investment, services and cultural sectors. Furthermore, they claim our basic social security programs (medicare and old age pensions) will be adversely affected by the deal since, in order for us to remain competitive in the industrial and manufacturing sectors, program standards will have to be lowered, both quantitatively and qualitatively. Lastly, opponents contend that the Agreement has not met its initial objective which was to secure Canadian exemption from protectionist U.S. laws and obtain assurances of a mandatory dispute settlement mechanism if the two countries disagree on whether to strengthen or to apply this exemption.

In the United States, the legislation to implement the Free Trade Agreement was sanctioned by the President on 28 September 1988, after being passed by the House of Representatives on 9 August (in favour: 366, opposed: 40) and by the Senate on 19 September (in favour: 83, opposed: 9, abstentions: 8). In Canada, following the dissolution of Parliament and the return of the Conservatives to office with a comfortable majority, the *FTA Implementation Act* was adopted by the House of Commons on 23 December 1988 and by the Senate on 30 December, in time for its enforcement date of 1 January 1989.

Under Chapter 18 of the FTA, the two countries have established the Canada-United States Trade Commission to supervise the implementation of the Agreement, resolve disputes, oversee the Agreement's further elaboration and consider any other matter affecting its operation. The Commission is composed of members from both countries, with the principal representative from each being the Trade Minister, or designate. In the two meetings it held in 1989 (March and November) the Commission, among other things, finalized details and procedures for two important working groups called for by the FTA -- one on the automotive industry and the other on subsidies; agreed on a timetable for accelerated tariff reduction negotiations; set initial parameters for the working groups on agriculture; and established both a working group studying technical barriers to trade in fishery products and a Services group to monitor the implementation of Chapter 14 of the FTA. The Commission also held two meetings in 1990 (May and October). The areas where progress was made are in the dispute settlement process, technical changes to the Rules of Origin and cutting tariffs faster than prescribed under the FTA. When the Commission met again in mid-August 1991, in Seattle, Washington, the following decisions were made. It was agreed that a process to amend the Chapter 19 dispute settlement rules would be submitted by the Binational Legal Working Group. A recommendation was accepted from the Subsidies and Trade Remedies Working Group to await the outcome of the GATT Uruguay Round before deciding what further work should be done to fulfill obligations set out in Articles 1906 and 1907. Approval was also given to the amendment to the rules of origin on oilseed products and other items.

The Select Panel on the Automotive Industry, which consists of 30 non-government members, 15 from each country, has been given a two-year timetable to complete its work. The task of the panel includes assessing the state of the North American

automotive industry and making proposals for public policy measures and private initiatives which might lead to an improvement in the industry's competitiveness in domestic and international markets. Each government provided the panel with specific instructions regarding its priorities: the Canadian position focused on global competitiveness while the U.S. position also stressed rules of origin and subsidies issues. At a meeting held in August 1990, the Select Panel on the Automotive Industry decided, on a divided vote, to recommend that the two governments alter the FTA by further increasing, from 50% to 60%, the North American content required for vehicles to qualify for duty-free treatment. The Panel's majority concluded that this change would benefit the North American economy as a whole but Canadian officials held that most of the gain would accrue to the U.S., while most of the costs would be borne by Canada. Canada's Trade Minister rejected the Panel's recommendation, indicating he would wait for the completion of the study on competitiveness before making a final judgment.

The Subsidies and Trade Remedy Working Group is responsible for completing the negotiations on the definition of, and guidelines for, subsidy practices as set forth in Article 107 of the FTA. The thorny issue of subsidies was set aside in late 1987 when it became clear that agreement could not be reached within the deadlines set for completion of the original FTA negotiations. The FTA sets out a five-year period for these negotiations, with a possible two-year extension, during which the two countries are to decide on a substitute system of rules for antidumping and countervailing duties applied to bilateral trade. Canadian and American officials have agreed that the GATT negotiations underway should be allowed to run their course before serious efforts to negotiate bilaterally are undertaken.

At the end of 1989 the two countries had reached agreement on the reduction of tariffs on more than 400 items in each country's tariff schedule. The tariff reductions, which came into force on 1 April 1990, are expected to affect about $6 billion in cross-border trade. A second round of accelerated tariff cuts covering about 1,000 items in each country's list was under review last year by officials in Canada and in the U.S. Cuts were implemented on 1 July 1991. A third round of accelerated tariff reductions has been announced.

The Commission is enabled to refer bilateral trade disputes to binding arbitration (where both Parties agree). Under Chapter 19 of the FTA, each Party to the Agreement may also request that any amendment to the other Party's antidumping or countervailing duty statutes

be referred to a panel for a declaratory opinion on whether it conforms to the GATT, its Antidumping Code or Subsidies Code, or the object and purpose of the FTA. In addition, at either Party's request, a binational panel will decide whether antidumping or countervailing duty determination by a competent investigating authority of either Party is in accordance with the importing Party's law. The decision of a panel is binding on the Parties. Several binational dispute settlement panels have been set up to review the legal basis for countervailing duty and antidumping decisions in both countries. Canada has requested the establishment of panels to review U.S. decisions in a diverse mix of subsidy cases covering such items as red raspberries, plywood, textiles, pork and hogs, steel, replacement parts for self-propelled paving equipment, and lobsters.* For its part, the U.S. has requested a review of the final determination by Canada of U.S. dumping and subsidization on polyphase induction motors, a review of Canada's export prohibition on unprocessed salmon and herring, and a review of the beer dumping determination against U.S. producers by the International Trade Tribunal.

Other unresolved trade disputes in the spring and summer of 1992 increased the displeasure and frustration of Canadian officials. U.S. rulings imposed duties on billions of dollars worth of softwood lumber, chiefly from B.C. and Quebec (the initial duty of 14.48% was lowered to 6.5% in mid-May), and of 2.5% on tens of thousands of Honda Civics assembled in southern Ontario. **Disputes over beer, steel and beef also surfaced.** The perception in Canada was that the U.S. was in a bullying and protectionist mood, and Canadian officials issued strong protests with the U.S. Commerce Department.

Canada decided in September 1990 to join the U.S. and Mexico in preliminary talks on future negotiations for a North American Free Trade Agreement (NAFTA). The Canadian perspective on the prospect of a NAFTA is highly influenced by Canadian assessments of the strengths and weaknesses of the Canadian-U.S. Free Trade Agreement. Supporters of the NAFTA see it as an opportunity to resolve FTA implementation issues and complete the FTA's "unfinished agenda." Opponents of the NAFTA fear that it will exacerbate the economic damage allegedly done by the FTA. Those who see a North American Free Trade Agreement

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* For a discussion of each of those cases, see Library of Parliament, CIR 91-1E, "Canada-U.S. Trade Disputes."

as beneficial argue that free trade and other market liberalization initiatives provide the best opportunity for economic growth and social well-being. They also say that Canada, in order to protect the gains made in the Canada-U.S. FTA, must take part with the United States and Mexico in negotiations on North American free trade. On the other hand, critics and opponents of such an agreement argue that it would bring more job losses and is simply a device for corporations to avoid paying decent wages or to evade environmental regulations in Canada or the United States. They say that low wages in Mexico and the fact that Mexican health, safety, and environmental standards are frequently unenforced would create unfair competition for Canadian and American manufacturers and workers. The two main opposition parties in the House of Commons object to the conclusion of a NAFTA on the grounds that the federal government has no moral right to sign an agreement without first calling a general election.

In early February 1991, the three countries formally announced their decision to open negotiations to establish the biggest free-trade zone in the world; its boundaries would encompass 360 million people, against Western Europe's 326 million. It is important to note, however, that the most significant economic benefits of the trilateral negotiations will be felt by the U.S. and Mexico, while the net economic benefits to Canada will be much smaller. There are three main reasons for this. First, we do not do much trade with Mexico; although Canada is Mexico's fifth largest foreign supplier, Mexico hardly makes the top 20 among Canadian export destinations. The total value of Canadian exports to Mexico in 1991 was under $450 million and under 1% of the total value of Canadian exports. On the import side, Mexico sold $2.5 billion in goods and services to Canada in 1991, or just over 1% of the total value of Canadian imports. Second, most of our trade is already free. The effective duty rate on Mexican exports to Canada is 2.4% though approximately 80% of such exports already enter Canada duty free. Third, we do not exchange much investment. Direct investment ties between Canada and Mexico are weak, amounting to about $400 million respectively in each country.

Free trade talks between the three countries opened in mid-June 1991 and are spread among six issue groups, including market access, trade rules, services, investment, intellectual properties and dispute settlement. The Canadian negotiating team was led by Mr. John Weekes, a former ambassador to the GATT in Geneva, while Mr. Jules Katz and Sr. Herminio Blanco led the American and Mexican teams respectively.

A tentative agreement was reached between the three countries on 12 August 1992. Expanding on the FTA - the provisions of which remain for the most part intact - the new deal provides for the elimination of border tariffs on almost all products shipped among the three countries by 2003. The key elements of the agreement are:

Automobiles: NAFTA will gradually eliminate Mexico's protectionist auto tariffs. Canadian companies, which have traditionally found the Mexico market tough (Mexican competitors, on the other hand, have enjoyed virtually unhindered access to the Canadian market) will benefit greatly.

Eligibility for duty-free trade, however, will be made more restrictive over an eight-year phase-in period. Companies will need to produce 62.5% of their automobiles and light trucks and 60% of their auto parts in North America, to avoid paying duties when exporting to another NAFTA country. Under the FTA, the percentage had been 50%. But it is envisaged that simpler and better-defined rules for calculating these new percentages will reduce the number of trade squabbles which have so dominated recent Canada-U.S. trade relations.

Textiles: Tariffs on textiles and apparel trade between the three countries will be eliminated over the next 10 years. As with automobiles, however, the agreement will impose more restrictive regulations on what products will quality for duty-free trade. Products will need to be made from North American fabrics produced from North American yarn. Although most products made by Canadian companies do not qualify under the new rules, the agreement provides an exemption for fixed quotas of Canadian exports to the United States. While Canadian textile producers feel their quota will be sufficient, Canadian apparel companies are not happy with theirs and fear that job losses may result.

Energy: NAFTA will limit Mexico's restrictions on investment while at the same time preserving its restraints on private ownership. Mexico, unlike Canada under the terms of FTA, will not guarantee oil and gas shipments to the U.S. during energy crises.

Services: NAFTA will broaden the provisions of the existing trade deal between the United States and Canada to include most areas of the service sector. Restrictions on transborder rail, truck and tour-bus transportation will be virtually eliminated.

By the end of the decade, the Mexican financial services industry will be open to Canadian and U.S. companies. This means that Canadian banks, trust companies, security brokers and insurance companies will be able to open Mexican subsidiaries and acquire ownership of Mexican financial institutions.

However, a key aim of Canadian negotiators - to improve access to the U.S. financial services market for Canadian companies - was not realized.

Agriculture: Tariffs on agricultural products traded among the three countries will be eliminated over the next 15 years. At the same time, the agreement allows Canada to maintain barriers necessary for its supply-management system of dairy, egg and poultry production.

As with FTA, cultural industries are exempt from NAFTA, as are health and social services. Canadian policy prohibiting large-scale export of water is also not affected. FTA's dispute settlement clauses have apparently been strengthened so as to limit the possibility of unilateral action and to ensure the implementation of decisions. As for environmental issues, which were the subject of intense public debate during the negotiations, NAFTA includes a provision that health, safety and environmental standards will not be lowered to attract investment. This provision was reinforced by an environmental deal signed by the three countries on 18 September 1992 aimed to prevent "pollution havens" in North America. NAFTA also includes an accession clause allowing other countries in the Western Hemisphere to join at a later date.

As expected, NAFTA has met with mixed reviews in Canada, as federal opposition parties, organized labour and a plethora of other concerned groups have voiced their displeasure. The agreement must still be ratified by the legislatures of Canada, the United States and Mexico; if it is approved, it will take effect on 1 January 1994.

B. Energy Policies

Many bilateral agreements on energy have been concluded between the two countries in the past few decades. Energy has frequently travelled from north to south, because of economies of transport.

Canada produces large surpluses of natural gas, heavy oil and electricity, which it exports to the U.S. While these sales constitute a dependable and secure source of energy for various U.S. markets, they represent at the same time substantial revenues for Canada of several billion dollars. British Columbia, Ontario, Quebec and New Brunswick are Canada's main exporters of electricity to the United States. Alberta exports crude oil and natural gas. To a lesser extent, Saskatchewan and British Columbia export crude oil and natural gas respectively. Canada is at present the largest exporter of oil and oil products to the United States; these products are the second most important export to the U.S. after automobiles. The National Energy Board approved in October 1989 a $10.9 billion plan by a consortium of three Canadian companies (Esso Resources Canada, Gulf Canada Resources and Shell Canada) to export 9.2 trillion cubic feet of natural gas during a 20-year period beginning no later than the end of year 2000.

C. Environmental Concerns

The past few years have witnessed a true awareness on both sides of the border of the vital importance for the quality of life of a healthy environment. Hence matters relating to the protection of the environment have become increasingly prominent in our bilateral relations.

The quality of Great Lakes water is of prime importance for both countries and in 1972, Canada and the United States entered into an agreement about this. They promised to eliminate at their source the main polluting agents, such as the emptying of municipal sewers into the Great Lakes and into rivers and water bodies of the Great Lakes basin. The agreement also established certain specific objectives for the gradual elimination of the dumping of toxic substances such as phosphate and other industrial waste into the basin. Canada and the U.S. have done much to eradicate the main sources of pollution in the Great Lakes; however, much remains to be done. At the end of 1978 the two countries signed a second agreement on Great Lakes water quality. Renewed at the end of 1983, the agreement called for stricter control measures and programs to eradicate pollution of the basin.

In mid-November 1987, the two countries signed a third agreement on Great Lakes water quality. The agreement binds the governments to report more comprehensively on pollution problems at 42 problem spots along the lakes; commits authorities to move on remedial action plans aimed at cleaning up the problem areas; sets up the first lake-wide pollution management plans which will make it harder for federal, provincial or state governments to shirk responsibility for their lack of action on cleanup; and offers first steps to control toxic rain - air pollution considered far more dangerous than acid rain, caused by combinations of industrial chemicals that end up in the water and in locally produced food.

In early February 1989, Canada released its first report under the 1987 Protocol to the Great Lakes water quality agreement. The report calls for complete elimination of the most toxic form of dioxin, 2, 3, 7, 8 - TCDD. As well, it calls for accelerated reductions of such highly toxic substances as toxaphene and selenium. The report highlights:

- progress in establishing remedial action plans for the clean up of 17 Canadian or Canada-U.S. "hot spots";
- adoption of objectives to limit pollutants entering the lakes;
- development of programs to reduce effluent run off resulting from land use activities;
- identification of existing and potential sources of contaminated groundwater; and
- establishment of a Canada-U.S. monitoring network to improve assessment of airborne toxic substances.

On 11 April 1990, the International Joint Commission released its Fifth Biennial Report under the Great Lakes Water Quality Agreement of 1978. The chief conclusion of the report is that, according to available research data on the fauna, "there is a threat to the health of our children emanating from our exposure to persistent toxic substances, even at very low ambient levels." Therefore the Commission urges the Parties to "take every available action to stop the inflow of persistent substances into the Great Lakes Environment." Among specific measures recommended, the following are crucial: 1) the Parties complete and implement immediately a binational toxic substances management strategy to provide a coordinated framework for accomplishing, as soon and as fully as possible, the Agreement philosophy of

zero discharge; 2) the Parties and all levels of government, including local authorities, cooperatively develop and implement appropriate legislation, standards and/or other regulatory measures that will give enforceable effect, basinwide, to the principles and objectives of the Agreement; 3) additional review and coordination measures be put into effect to ensure that other current legislation and/or regulations affecting matters relevant to the Great Lakes environment -- or those enacted in the future -- are consistent with Agreement Objectives; 4) the Parties strengthen the principle of reverse onus in policies and programs concerned with the introduction of new chemicals, through appropriate legislation and/or regulations that include mandatory pre-testing prior to approval for production and use; 5) the Parties, in their next biennial reports to the Commission, report on the extent to which discharges of 11 critical pollutants previously identified by the Great Lakes Water Quality Board and known to have serious detrimental effects on living organisms have been considered in the issuance of National Pollutant Discharge Elimination System permits and control orders; 6) that Parties designate Lake Superior as a demonstration area where no point source of discharge of any persistent toxic substance will be permitted. The Commission further recommends that "all levels of government accept, and encourage others to accept, their responsibility to implement the Great Lakes Water Quality Agreement, and give priority to actions that contribute to the protection and restoration of the Great Lakes Basin Ecosystem."

On 16 April 1992, the Commission released its sixth biannual report pursuant to the Great Lakes Water Quality Agreement of 1978. The report stressed that the main problem continues to be the presence of persistent toxic substances and their impact on all sectors of the ecosystem. The report concludes that:

> the philosophy of zero discharge thus must become a reality as soon as technologically possible... A zero tolerance for the entry of any persistent toxic substance into the Great Lakes environment including the St. Lawrence River in its entirety) from human sources should be adopted and acted on immediately by all sectors of society in order to begin to virtually eliminate all human inputs of persistent toxic substances to the Great Lakes system.

Acid precipitation, whether in the form of "wet deposition" or "dry deposition," has become the most pervasive and most feared environmental pollutant in North America. The

most affected regions are eastern Canada and the northeast region of the U.S. because of a lack of natural buffering or neutralizing capacity in the rocks and soil. Extensive research over many years has clearly shown that acid rain poses a serious threat to forest ecosystems, agricultural crops and man-made structures. Moreover, decreased productivity and even disappearance of fish species have been observed in lakes and rivers of eastern Canada and northeastern United States. The transboundary aspect of acid rain is of vital concern to Canada because of high emissions by American industry and the prevailing winds, which carry large quantities of these pollutants into our country. Acid rain in Canada comes chiefly from sources south of the border. It is estimated that sulphur emissions from the United States help to create half of Canada's acid rain, whereas Canadian emissions are responsible for only 10% of acid rain in the United States.

The signing in early August 1980 of a Memorandum of Intent on Air Pollution constituted a positive event in the area of environmental concerns. The memorandum pledged both governments to negotiate an agreement on transboundary air pollution, especially the problem of acid rain, and to enforce current anti-pollution laws more rigorously. These early pledges to collaborate soon fell by the wayside in the U.S. The U.S. Environmental Protection Agency's new management embraced the view that acid rain was not a proven problem and launched more research to gather data on its causes, trends and impacts. Frustrated by this turn of events, Canadian officials mounted a public awareness campaign in the U.S.

In early March 1985, Canada's Environment Minister announced a major acid rain clean-up plan designed to reduce sulphur dioxide emissions by 50% in eastern Canada over the next decade. The plan included government aid to the smelting industries for pollution control and stricter auto emission standards. But it also stressed that help from the United States is required for a total solution to the acid rain problem. The American authorities, however, repeatedly stated that a parallel reduction would be premature, since in their opinion there was still too little scientific certainty about the source of acid rain to set limits to pollution that may cause it. Canadian officials expressed disappointment that the U.S. would not be implementing emission reductions in the foreseeable future. At his quarterly meeting with the U.S. Secretary of State in January 1988, Secretary of State Joe Clark again requested the U.S. to match Canadian efforts with a pledge to cut acid rain emissions by 50% by 1994.

Canadian officials were heartened by the fact that the new American administration headed by George Bush announced its intention to introduce legislation to curb acid rain. The U.S. Senate passed legislation in April 1990 that would halve acid rain causing emissions by the turn of the century. The legislation would strengthen federal emission controls on factories, power plants, and cars, slashing sulphur dioxide emissions to about 10 million tons by the year 2000 and reducing smog and other air pollution. The House of Representatives passed its own similar bill in May 1990. At the end of October, congressional negotiators agreed on a version of a revised U.S. *Clean Air Act* that satisfied both Houses. Canadian and American officials rapidly agreed upon a bilateral acid rain accord and the two heads of government signed an acid rain treaty at their summit meeting in Ottawa, 13-14 March 1991.

D. Maritime Boundaries and Fisheries Issues

When both countries decided to extend their fishing zones on the Atlantic and Pacific coasts from 12 to 200 miles at the beginning of 1977, problems arose with respect to the exact delimitation of maritime boundaries and the fishing resources within them. This decision had come about because of an urgent need to halt the rapid depletion of stocks and the decline of the coastal fishing industry, which had led to an alarming situation. Because of this, large areas which had previously been high seas, and in which both countries had fished as they pleased, now fell under the exclusive jurisdiction of one country or the other. This raised the question of whether fishing by one country off the coast of the other could continue and, if so, under what kind of arrangements.

Controversy exists about delimitation of the maritime boundaries. On the Atlantic coast, both countries laid claim to the Georges Bank region, which is one of the richest locations for the scallop, herring and cod fisheries, but which also holds some large oil and natural gas resources. On the West Coast, the major issue is the water boundary between Canada and the United States in the Dixon Entrance, the channel which divides the Alexander Archipelago in Alaska and the Queen Charlotte Islands in British Columbia. Finally, on the northwest coast, the boundary of the continental shelf adjacent to the Beaufort Sea must be established.

The voyage of U.S. Coast Guard icebreaker "Polar Sea" through the Northwest Passage In August 1985 raised in a cogent manner Canada's claim to sovereignty in the Arctic. While Canadian rights to the continental shelf in the Arctic, to a 12-mile territorial sea and a 200-mile fishing zone are firmly established, the situation with respect to the Northwest Passage is less clear. Canada holds that the waters making up the Passage are internal and that any navigation in them will be subject to Canadian control and regulation for safety and environmental purposes. The U.S. maintains that foreign ships have a right of passage through these waters, as they might be classified as an international strait. The White Paper on defence published in June 1987 reaffirmed Canada's sovereignty over the Arctic through a policy of strengthening the country's northern defences. At their quarterly meetings on 11 January 1988, the two countries' foreign affairs ministers signed an agreement on Arctic cooperation to allow U.S. icebreakers to travel through the Northwest Passage. Under the agreement, though the U.S. must obtain Canadian consent for its ships to travel the passage, Washington will not acknowledge Canadian claims to sovereignty in the waters.

The International Court of Justice rendered its ruling on the Georges Bank boundary dispute on 12 October 1984. Canada's claim was cut back from about half of the undersea ridge to one-sixth. Canadian experts think, however, that the retention of the northeast peak of the Georges Bank favours Canada from the viewpoint of both the fisheries and potential oil resources. The Court decision gave Canada about 50% of the scallop grounds and marginally increased the groundfish stock of haddock and cod at the northern end of the line.

On the West coast, the two countries signed a treaty at the end of May 1981 that permitted Pacific coast fishermen to fish in both countries' waters for albacore tuna for the next three years and to use ports on both sides of the border to unload catches. In addition, an agreement on Pacific salmon was concluded in December 1984. Three basic principles were involved in the agreement: prevention of overfishing and provision for optimum production; assurance that each country will receive benefits equivalent to the production of salmon originating in its water; and establishment of bilateral cooperation in salmon management, research and enhancement in the Pacific north west, Alaska and Canada. The agreement creates a new Pacific Salmon Commission, which makes recommendations on the fishing plans of each country.

The two governments reached agreement in February 1990 on a long-standing dispute over Pacific salmon and herring. For conservation purposes, Canada had required that all the salmon and herring caught off the West Coast be landed in Canada in order to ensure proper management of the fish stocks. In November 1989, an FTA panel ruled that the Canadian measure restricted exports and suggested that the dispute could be resolved by requiring that 80 to 90% of the catch be landed, allowing the remainder to be sold directly over the sides of the fishing boats to the U.S. for export. Under the settlement, through a system of at-sea landing stations, Canada would be able to require that all salmon and herring be brought to a registered landing station and that up to 20% of the allowable catch be made available for over-the-side export at sea in 1990. In 1991 through 1993, 25% of the catch will be available to the U.S. through at-sea landing stations.

PARLIAMENTARY ACTION

A. Canada-U.S. Inter-Parliamentary Group

The Canada-U.S. Inter-Parliamentary Group was created in 1959. Its main objective is to allow Canadian and U.S. parliamentarians to exchange information about and promote better understanding of common interests and accomplishments, as well as of differences and difficulties. The chief issues discussed by parliamentarians from both countries at their most recent meeting, in Boca Rata, Florida, from 9 to 13 April 1992, were the implementation of the Free Trade Agreement, energy, the environment, fisheries, and defence issues.

B. Bill C-2: An Act to Implement the Free Trade Agreement between Canada and the United States

Bill C-2 (replacing Bill C-130, which had died on the Order Paper with the dissolution of Parliament on 1 October 1988) was adopted by the House of Commons on 23 December and the Senate on 30 December 1988. It called for amendments to 27 existing federal laws. The legislation:

- empowered the federal government to fulfill Canada's obligations under the Agreement;

- approved the Agreement, provided for the appointment of representatives to the Canada-United States Trade Commission established to oversee it, and, where necessary, empowered the federal government to enforce the provisions of the Agreement respecting wine and distilled spirits;

- established a Procurement Review Board whose function would be to consider the procurement practices of federal departments;

- amended the *Special Import Measures Act* so as to implement the emergency action provisions outlined in Chapter Eleven of the Agreement, and provided for the establishment of binational panels with responsibility to review decisions concerning the application, in accordance with Canadian laws, of antidumping and countervailing duties on goods imported from the United States;

- amended 26 other federal laws to ensure their compatibility with the Agreement.

C. Report of the Senate Foreign Affairs Committee on Monitoring the Implementation of the Canada-United States Free-Trade Agreement (March 1990)

On 28 March 1990, the Senate Foreign Affairs Committee tabled its first report on Monitoring the Implementation of the Canada-United States Free Trade Agreement. While the Committee recognized that one year was too short a period for patterns to become clear and that data and information were in short supply, it was of the opinion that "in many respects the implementation of the more technical aspects of the FTA -- such as legislative and regulatory changes, further studies and working groups, the design and implementation of new certificates of origin and temporary permits, and tariff reductions -- appears to be proceeding smoothly." The Committee expressed concerns about the following points: information-gathering, analysis, and monitoring efforts; the capacity to initiate action in Canada, and to respond to an "aggressive" and "legalistic" U.S. approach to FTA implementation; the capacity to arm Canadian negotiators for what promises to be a difficult and prolonged negotiation over subsidies; and the capacity to transpose Canadian FTA concerns and policy initiatives into the global context of Canada's larger trade policy agenda at the GATT, the Uruguay Round of

Multilateral Trade Negotiations, the Europe 1992 initiative, developments in Eastern Europe and regional economic cooperation initiatives in the Pacific basin.

D. Second Report of the Senate Foreign Affairs Committee on Monitoring the Implementation of the Canada-United States Free Trade Agreement (November 1990)

At the end of November 1990, the Senate Foreign Affairs Committee tabled a second report on monitoring the implementation of the Canada-United States Free Trade Agreement. Among some of its conclusions based on early experiences, the Committee noted that Chapter 18 disputes were not being sent for binding resolution because the two governments appeared to be unwilling to delegate decision-making powers to arbitrators. The Committee also expressed the view that non-binding panel decisions would provide a basis for further bargaining and negotiation rather than being applied precisely as written. On the other hand, the Committee found that the panel process worked much faster than the GATT, which had been plagued in the past by very slow panel procedures that often took years. The prompt production of decisions increased pressure on the two governments to respond to the recommendations, even if either was not happy with the panel's finding.

E. Report of the House Standing Committee on External Affairs and International Trade on Its Examination of Canada-U.S. Mexico trade Negotiations

In February 1991, the House Standing Committee on External Affairs and International Trade tabled a report on its examination of Canada-U.S. Mexico preliminary negotiations for a trilateral free trade agreement.

Following a discussion of whether Canada should participate in the negotiations for a North American Free Trade Agreement, and, if so, what should be its objectives, the report put forward some general proposals regarding Canada's international trade policy. First, in the eyes of the Committee, "increased international competition is a reality to which Canada must and should adjust." Second, "there needs to be far greater cooperation between government, business and labour in the formulation and implementation of international trade

policy." Third, "Canada should give the highest priority in its international trade policy to protecting and strengthening the multilateral system." Fourth, "concerns such as human rights, social policy and the environment should be taken into account as Canada developed its trade relations with Mexico." Finally, the Committee called for close consultation with Parliament as the NAFTA negotiations proceeded.

CHRONOLOGY - MAJOR EVENTS, 1987 -

General Overview of Relationship

6-7 April 1987 - Prime Minister Mulroney and U.S. President Reagan held their third summit, in Ottawa, to discuss bilateral issues. While the summit did not result in the signing of agreements or resolve major pending issues between the two countries, Mr. Reagan agreed to consider Prime Minister Mulroney's proposal for a bilateral accord on acid rain and to inject new impetus into the discussions already under way on Arctic sovereignty. In his address to both Houses of Parliament, Mr. Reagan reiterated his strong support for the establishment of a free-trade agreement that would eliminate most remaining trade barriers between Canada and the United States.

11 January 1988 - On the occasion of U.S. Secretary of State George Shultz's visit to Ottawa, the two countries signed agreements on Arctic cooperation, on the extradition of criminals and on cooperation in fighting terrorism.

30 September 1988 - Appointment of Derek Burney, the Prime Minister's Chief of Staff, to the post of Canadian Ambassador to the United States, effective 1 January 1989.

10 February 1989 - During the official visit to Canada of the newly elected President of the U.S., George Bush, the two chief government executives reviewed several bilateral issues, particularly the implementation of the Free Trade Agreement and acid rain.

10 April 1990 - At their second summit, in Toronto, Prime Minister Mulroney and U.S. President Bush discussed, among other things: Bush's summit with Soviet leader Gorbachev, to be held 20 May-3 June; German reunification; the Lithuanian independence movement;

the future of NATO; the progress on U.S. acid rain legislation; and the impact of the FTA.

13-14 March 1991 - Prime Minister Mulroney and U.S. President Bush held their third Summit meeting, in Ottawa. They signed a historic agreement on acid rain and held discussions on the post-war situation in the Middle East and the Persian Gulf.

5 May 1992 - President Bush nominated Mr. Peter Teeley, a longtime adviser and former aide, as U.S. Ambassador to Canada, replacing Mr. Edward Ney.

20 May 1992 - Prime Minister Mulroney and U.S. President Bush met in Washington to discuss bilateral issues and problems. Trade issues - Canada was complaining of U.S. trade harassment - were at the forefront of the discussions. The U.S. President promised to take early and personal interest as new problems arise and to work to eliminate any feeling of harassment.

Trade Issues

3 October 1987 - The Canadian and American governments agreed in principle on the elements to be included in a free trade agreement. Key elements were: a phase-out of all tariffs between the two countries by the end of 10 years; creation of a unique dispute settlement mechanism with binding powers; freer trade in agriculture, wine and spirits and energy products; enhancement of the Auto Pact; expanded access to purchases by governments; an unprecedented code to set rules for trade by the services industries; and greater access to the other country by each country's investors.

31 August 1988 - Adoption by the House of Commons of Bill C-130, *An Act to Implement the Free Trade Agreement Between Canada and the United States*. The bill died on the Order Paper when Parliament was dissolved on 1 October 1988.

28 September 1988 - The President of the United States sanctioned the Free Trade Agreement, following its adoption by the House of Representatives on 9 August (in favour: 366; opposed: 40) and by the Senate on 19 September (in favour: 83; opposed: 9; abstentions: 8).

30 December 1988 - Bill C-2, replacing Bill C-130, having been passed by the House of Commons on 23 December, was passed by the Senate. It received Royal Assent on 30 December.

1 January 1989 - Coming into force of the Canada-U.S. Free Trade Agreement, with provision for its gradual implementation.

1 April 1990 - Acceleration of reduction of tariffs on more than 400 items worth about $6 billion in cross-border trade came into effect.

5 February 1991 - Canada, the United States and Mexico announced that the three countries would begin trilateral free trade talks in the spring.

1 July 1991 - The second round of acceleration of reduction of tariffs came into effect. Affected were more than 400 products on each side, worth some $2 billion in bilateral trade.

12 August 1992 - Canada, the United States and Mexico tentatively arrived at a North American Free Trade Agreement.

Environmental Concerns

February 1989 - Publication of the First Report of Canada under the 1987 Protocol to the 1978 Great Lakes Water Quality Agreement. The report called for accelerated reductions of highly toxic substances.

April 1990 - Release of the Fifth Biennial Report of the IJC under the Great Lakes Water Quality Agreement of 1978. The report concluded that the health of the population is threatened by the exposure to persistent toxic substances. It called for immediate action by all levels of government.

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